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DISTRICT OF HAWAII

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 11 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

RUFUS ROBINSON; et al.,

Plaintiffs - Appellants,

v.

TRIPLER ARMY MEDICAL CENTER;
et al.,

Defendants - Appellees.

No. 05-17011

D.C. No. CV-04-00672-DAE

ORDER

On October 4, 2005, Appellants filed a notice of appeal from the district court's June 27, 2005 order, certified pursuant to Federal Rule of Civil Procedure 54(b) on August 26, 2005, granting summary judgment for Appellees/Defendants Tripler Army Medical Center and the Director of Intensive Care Unit (the "Federal Appellees"). Appellants also purported to challenge the district court's order in favor of Appellees/Defendants State of Hawaii, Department of Human Services, and State of Hawaii, Child Protective Services (the "State Appellees"). A review of the record suggests that at the time Appellants filed their notice of appeal, no

final judgment with regard to the State Appellees had been entered, and the action was still pending in district court against the remaining defendants. *See* Fed. R. Civ. P. 54(b); *see also* 28 U.S.C. § 1291.

On February 3, 2006, Appellants filed an amended notice of appeal seeking review of the following district court orders: the June 24, 2005 order granting the State Appellees' motion to dismiss; the January 5, 2006 order granting the motion to dismiss of Appellee/Defendant Honolulu (City) Police Department (the "Honolulu Police Department"); and the January 27, 2006 Order granting the motion for summary judgment of Appellees/Defendants Patricia Snyder, David K.Y. Kam, and Elliott Plourde (the "Individual Appellees").

On February 7, 2006, Appellants filed their opening brief. On March 21, 2006, the Federal Appellees filed their answering brief. The district court dismissed the only remaining defendant and terminated the action on April 13, 2006. *See Anderson v. Allstate Insurance Co.*, 630 F.2d 677 (9th Cir. 1980) (holding that a prematurely filed notice of appeal may be cured if the rest of the claims are disposed of in a subsequent final decision terminating the litigation).

Accordingly, within 21 days after the filing date of this order, the State Appellees, the Honolulu Police Department, and the Individual Appellees shall show cause why they need not file answering briefs or face the sanction authorized by Federal Rule of Appellate Procedure 31(c). If necessary, the court will set a briefing schedule upon disposition of this order to show cause.

For the Court

A handwritten signature in black ink, reading "Veronica Rossman". The signature is written in a cursive style with a large, stylized "V" and "R".

Veronica Rossman
Staff Attorney/Deputy Clerk
9th Cir. R. 27-7
General Orders/Appendix A